August 31, 2018

Marlene Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington DC 20554

Re: Broadcast Incubators, MB Docket No. 17-289

Dear Ms. Dortch:

On Thursday, August 30, I held a telephone call with Office of General Counsel staff Chin Yoo (Deputy Associate General Counsel) and Attorney-Advisors Paula Silberthau and Carla Conover, as well as Media Bureau staff Sarah Whitesell (Deputy Chief of the Bureau), Albert Schuldiner (Chief, Audio Division), Brendan Holland (Chief, Industry Analysis Division), Radhika Karmarkar (Deputy Chief, Industry Analysis Division), and Jamila Bess Johnson (Attorney-Advisor).[1]

The discussion on our telephone call primarily concerned the definition of "comparable markets" in *Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services (R&O)*, FCC 18-114 (released August 3, 2018) ("Incubators R&O"), ¶¶68-69. The merits of the subject were described in my August 20, 2018 *ex parte* letter (with NABOB President James Winston) in this docket.

The "comparable markets" definition in the Incubators R&O would permit a broadcaster to incubate a station in any small market with 45+ full power stations (*e.g.,* Traverse City-Petoskey-Cadillac) and, in return, receive an assignable waiver of the 8-station rule usable in any other 45+ market (like New York City). Thus, the only incubations will occur in relatively small markets with 45+ stations. The math works out such that $1 invested in an incubator could yield in the range of $100 upon the sale of the large market waiver. I reiterated that I believed this "comparable markets" definition was mistake and would likely destroy the incubator program, and diminish minority ownership opportunities, because no rational broadcaster would ever incubate under any other paradigm but small-to-very-large comparables. I stated that this error ought to be corrected before the program begins. If experience later demonstrates that the comparable markets definition was a mistake, the agency would find it difficult to revert to a narrower definition. Such a "re-regulatory" correction would be almost unprecedented in FCC history, as well as difficult to accomplish because it would require upsetting incubating companies' settled expectations while triggering a battle over grandfathering.

I reported that MMTC has been exploring new potential definitions of "comparable markets" that would be acceptable to the agency, and that MMTC would convene a panel of experts to help design such.

Finally, I stated that if the "comparable markets" definition were cured, the incubator program should be defensible in court as a net positive for diversity, since it would partly address the need for greater ownership diversity in broadcasting.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's Rules.

Sincerely,

David Honig

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cc: Paula Silberthau, Chin Yoo, Carla Conover, Sarah Whitesell, Albert Schuldiner, Brendan Holland, Radhika Karmarkar, and Jamila Bess Johnson

[1] I participated in the call on behalf of the Multicultural Media, Telecom and Internet Counsel (MMTC), not on behalf of either any advisory committee or working group on which I am a member or on which MMTC is represented. The statements I made during the call reflect the views of MMTC, but have not been approved by either any advisory committee or working group on which I am a member or on which MMTC is represented.